A

CAPTAIN HO FOOI

v.

STANDARD CHARTERED BANK MALAYSIA BHD

B

COURT OF APPEAL, PUTRAJAYA
RAUS SHARIF JCA
AHMAD MAAROP JCA
SULAIMAN DAUD JCA
[CIVIL APPEAL NO: B-03-220-2004]

C

13 APRIL 2009

BANKRUPTCY: *Petition - Opposition to petition - Whether notice of intention to oppose complied with Bankruptcy Rules 1969 - Whether there was service on judgment debtor - Whether calculation of late charge*

D

correctly stated - Whether claim for interest within limitation period - Bankruptcy Act 1967, s. 3(1)(i), Proviso (ii) s. 3(2) - Bankruptcy Rules 1969, rr. 18(1), 95(1), 117 - Limitation Act 1953, s. 6(3)

BANKRUPTCY: *Interest - Calculation of interest - Recovery of interest*

E

pre and post judgment debt - Whether Limitation Act 1953 applies to interest post judgment - Whether interest pre judgment merges into judgment debt and recoverable - Perwira Affin Bank Bhd v. Lim Ah Hee

The respondent judgment creditor ('JC') obtained a judgment

F

against the appellant judgment debtor ('JD') in the sessions court. When the JD failed to pay the judgment debt, the JC issued a bankruptcy notice ('BN') after which the JC filed a creditor's petition alleging failure by the JD to comply with the requirements of the BN within the stipulated time frame. The deputy registrar

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dismissed the petition with costs and the JC appealed to the judge in chambers. Notwithstanding the order dismissing the petition, the JD applied by way of summons-in-chambers, *inter alia*, for the same relief that was earlier granted in the said order. Meanwhile, the JC's appeal to the judge in chambers was allowed and

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receiving and adjudicating orders were made against the JD. Hence, the JD's appeal. The issues were: (1) whether the JD's notice of intention to oppose the petition complied with the requirements of the Bankruptcy Rules 1969 ('the Rules'); (2) whether there was service of the BN and the creditor's petition;

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(3) whether there was miscalculation of late charge in the sum of

RM12 as it was not due at the time of the filing of the BN; and (4) whether the interest claimed for a period of 3,193 days from 5 December 1986 to 1 September 1995 exceeded the limitation period of six years as per s. 6(3) of the Limitation Act 1953.

Held (dismissing the appeal)
Per Sulaiman Daud JCA delivering the judgment of the court:

(1) From the content of the notice of intention to oppose the petition, it was obvious that the JD did not only seek to challenge the creditor's petition but also to set aside the BN. There were two stages in bankruptcy proceedings, namely, the notice stage and the petition stage. The Rules also provided for different modes or procedures in opposing or challenging a BN and a creditor's petition. (para 16)

(2) Rule 18(1) of the Rules provides that every application to the court in a bankruptcy matter shall be made in chambers supported by affidavit, save where otherwise provided by the Act or the Rules. The procedure for setting aside a BN is governed by r. 95(1). The said rule only requires the applicant to file an affidavit in Form 7 stating either he has satisfied the judgment debt or that he has a counterclaim or set-off in the sum equal to or exceeding the claim. If the debtor intends to show cause against the petition, he is required under r. 117 to file a notice in Form 16 to the registrar specifying the statements in the petition which he intends to deny or dispute and transmit a copy thereof to the creditor three days before the day on which the petition is to be heard. The filing of the notice to oppose the petition for purposes other than 'to deny or dispute' the statement in the petition will render the said notice ineffective and bad in law. (paras 17, 19)

(3) The filing of the summons-in-chambers by the JD, as correctly held by the learned judge, was a 'blatant act of the debtor to remedy the fatal defect of procedural requirement'. Also, that the said summons was redundant as the deputy registrar had earlier dismissed the creditor's petition, *ie*, the like prayer sought in the summons. By filing the notice of intention to oppose the petition, the JD adopted the wrong mode of challenging the service and content of the BN and the creditor's petition. The appeal could be dismissed on those issues alone. (paras 20 & 21)

(4) The learned judge correctly found that there was a clear admission in the JD's affidavit that he was personally served with the BN. Also, the learned judge did not err in the decision he made on the issue that there was service of the creditor's petition. (paras 23, 24 & 25)

(5) Any challenge to the validity of a BN on the ground that the amount stated therein exceeds the amount actually due must be made within the time prescribed in the said notice as required by proviso (ii) to s. 3(2) of the Bankruptcy Act 1967 ('the Act'). The BN was personally served on the JD and the JD gave no notice to the JC that he disputed the validity thereof by reason of excess amount within the stipulated seven-day period. The JD would have committed an act of bankruptcy after the expiry of seven days from the date of service by virtue of s. 3(1)(i) of the Act. Based on the authorities, the appeal on the calculation of late charge must therefore fail. (paras 30, 31, 32 & 33)

(6) For the purpose of computing the six-year limitation period under s. 6(3) of the Limitation Act 1953, time begins to run from the date of the judgment for the recovery of interest of a judgment debt. Such limitation only applies to interest post and not pre judgment. The judgment herein was obtained on 1 September 1995 and the recovery for arrears of interest was only made until 12 August 1996 well within the six-year time limit. The interest claimed for the period of 3,193 days from 5 December 1986 to 1 September 1995 was for interest pre judgment debt. Interest calculated prior to the date of the judgment merged into the judgment debt and therefore recoverable by the creditor *(Perwira Affin Bank Bhd v. Lim Ah Hee)*. (para 40 & 41)

Bahasa Malaysia *Translation Of Headnotes*

Di mahkamah sesyen, pemiutang penghakiman responden ('JC') memperoleh penghakiman terhadap penghutang penghakiman perayu ('JD'). JD gagal membayar hutang penghakiman, dan berikutnya JC mengeluarkan notis kebankrapan ('BN') serta memfailkan petisyen pemiutang mendakwa bahawa JD gagal mematuhi kehendak-kehendak BN dalam tempoh yang ditetapkan. Timbalan Pendaftar menolak petisyen dengan kos dan JC merayu kepada hakim dalam kamar. Walaupun sudah wujud perintah yang

menolak petisyen, melalui satu saman dalam kamar, JD, antara lain memohon pula untuk mendapatkan relif yang sama seperti yang diberikan oleh perintah tersebut. Sementara itu, rayuan JC kepada hakim dalam kamar telah dibenarkan dan perintah penerimaan dan penghukuman telah dibuat terhadap JD. JD dengan itu merayu dan isu-isu yang berbangkit adalah: (1) sama ada notis niat JD untuk menentang petisyen mematuhi terma-terma Kaedah Kebankrapan 1969 ('Kaedah'); (2) sama ada terdapat penyampaian BN dan juga petisyen pemiutang; (3) sama ada terdapat kesalahan mengira bayaran kelewatan sebanyak RM12 disebabkan ia masih belum menjadi terbayar sewaktu pemfailan BN; dan (4) sama ada faedah yang dituntut bagi tempoh 3,193 hari dari 5 Disember 1986 hingga 1 September 1995 melampaui had tempoh enam tahun di dalam s. 6(3) Akta Had Masa 1953.

Diputuskan (menolak rayuan)
Oleh Sulaiman Daud HMR menyampaikan penghakiman mahkamah:

(1) Dari kandungan notis niat untuk menentang petisyen, jelas bahawa JD bukan hanya berhasrat untuk mencabar petisyen pemiutang tetapi juga ingin mengenepikan BN. Terdapat dua peringkat di dalam prosiding kebankrapan, iaitu peringkat notis dan peringkat petisyen. Kaedah juga memperuntukkan cara atau prosedur yang berlainan dalam soal menentang atau mencabar BN dan petisyen pemiutang.

(2) Peraturan 18(1) Kaedah memperuntukkan bahawa setiap permohonan ke mahkamah bagi sesuatu hal kebankrapan hendaklah dibuat di dalam kamar dan disokong oleh afidavit, kecuali jika diperuntukkan sebaliknya oleh Akta atau Kaedah. Prosedur bagi mengenepikan BN adalah dikawalselia oleh per. 95(1). Peraturan tersebut hanya mengkehendaki pemohon memfail afidavit di dalam Borang 7 menyatakan sama ada beliau telah pun memuaskan hutang penghakiman atau mempunyai tuntutan balas atau tolakan dalam jumlah yang sama dengan atau melebihi jumlah tuntutan. Jika penghutang berhasrat untuk menunjuk sebab terhadap petisyen, maka beliau hendaklah di bawah per. 117 memfailkan notis di dalam Borang 16 kepada pendaftar dan mengenalpasti kenyataan manakah di dalam petisyen yang hendak disangkal atau dipertikai oleh beliau serta menyerahkan salinannya kepada pemiutang tiga hari sebelum petisyen tersebut didengar.

Pemfailan notis untuk menentang petisyen bagi maksud-maksud yang selain dari 'untuk menyangkal atau mempertikai' kenyataan di dalam petisyen menjadikan notis tersebut tidak berkesan dan tidak sah di sisi undang-undang.

(3) Pemfailan saman dalam kamar oleh JD, seperti yang diputuskan dengan betulnya oleh yang arif hakim, adalah 'suatu tindakan terang-terangan penghutang bagi membetulkan kecacatan kehendak prosedur yang memudaratkan'. Saman tersebut juga adalah sia-sia kerana Timbalan Pendaftar sebelum itu telah pun menolak petisyen pemiutang, yang memohon perkara yang sama seperti yang dipohon oleh saman. Dengan memfailkan notis niat untuk menentang petisyen, JD telah memilih cara yang salah bagi mencabar penyampaian dan kandungan BN serta petisyen pemiutang. Atas isu-isu ini sahaja rayuan sudah boleh ditolak.

(4) Yang arif hakim telah mendapati dengan betulnya bahawa terdapat pengakuan yang jelas di dalam afidavit JD bahawa BN telah diserahkan kepadanya secara kediri. Apapun, yang arif hakim tidak silap dalam keputusan yang beliau buat berkaitan isu bahawa terdapat penyampaian petisyen pemiutang.

(5) Sebarang cabaran kepada kesahan BN atas alasan jumlah yang dinyatakan di dalamnya melebihi jumlah yang sebenarnya terhutang hendaklah dibuat dalam tempoh masa yang ditetapkan di dalam notis seperti yang dituntut oleh proviso (ii) s. 3(2) Akta Kebankrapan 1967 ('Akta'). Di sini BN telah diserah secara kediri kepada JD dan JD tidak memberi sebarang notis kepada JC bahawa beliau mempertikai kesahannya disebabkan jumlah tuntutan yang berlebihan dalam tempoh tujuh hari yang ditetapkan. Maka berdasarkan s. 3(1) Akta, JD telah melakukan perbuatan kebankrapan selepas berakhirnya tempoh tujuh hari dari tarikh penyampaian. Oleh itu, berdasarkan autoriti, rayuan terhadap salah pengiraan bayaran kelewatan seharusnya gagal.

(6) Bagi maksud mengira tempoh had masa enam tahun di bawah s. 6(3) Akta Had Masa 1953, masa mula bergerak dari tarikh penghakiman bagi tuntutan faedah terhadap hutang penghakiman. Had masa sedemikian hanya terpakai kepada faedah pasca penghakiman dan tidak pra penghakiman. Penghakiman di sini diperolehi pada 1 September 1995 dan

tuntutan bagi tunggakan faedah hanya dibuat pada 12 Ogos 1996, iaitu masih sangat di dalam tempoh had masa enam tahun. Faedah yang dituntut bagi tempoh 3,193 hari bermula 5 Disember 1986 hingga 1 September 1995 adalah faedah bagi hutang pra penghakiman. Faedah bagi tempoh sebelum tarikh penghakiman terangkum ke dalam hutang penghakiman dan dengan itu adalah boleh dituntut oleh pemiutang (*Perwira Affin Bank Bhd v. Lim Ah Hee*).

Case(s) referred to:

Dato' Sri Teong Teck Leng v. Jupiter Securities Sdn Bhd [2003] 4 CLJ 34 CA ***(refd)***

Datuk Lim Kheng Kim v. Malayan Banking Bhd [1993] 3 CLJ 324 SC ***(refd)***

Development & Commercial Bank Bhd v. Datuk Ong Kian Seng [1995] 3 CLJ 307 FC ***(refd)***

Fawzia Osman v. Bank Bumiputra (M) Bhd [1991] 1 CLJ 652; [1991] 1 CLJ (Rep) 113 SC ***(dist)***

Ghazali Mat Noor v. Southern Bank Bhd & Other Cases [1989] 2 CLJ 380; [1989] 1 CLJ (Rep) 35 SC ***(dist)***

Lee Ing Chin v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA ***(refd)***

Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra (Malaysia) Sdn Bhd [2002] 1 CLJ 645; [2002] CLJ (JT2) FC ***(dist)***

Perwira Affin Bank Bhd v. Lim Ah Hee [2004] 2 CLJ 787 FC ***(refd)***

United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin [2002] 2 CLJ 413; [2002] CLJ (JT3) FC ***(refd)***

Watt v. Thomas [1947] AC 484 ***(refd)***

Wee Chow Yong, ex p Public Finance Bhd [1990] 1 CLJ 176; [1990] 3 CLJ (Rep) 349 HC ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, s. 3(1)(i), (2)
Bankruptcy Rules 1969, rr. 18(1), 95(1), 117
Limitation Act 1953, s. 6(3)
Rules of the Court of Appeal 1994, rr. 18(1), (4)(d), (7)

For the appellant - JS Gill; M/s Putra Gill
For the respondent - Ahmad Budiman; M/s Ho Loke Koh

[Appeal from High Court, Shah Alam; Bankruptcy No: 29-2261-96]

Reported by Usha Thiagarajah

A

JUDGMENT

Sulaiman Daud JCA:

[1] This is an appeal from the decision of the learned judge of the High Court at Shah Alam allowing the respondent creditor's appeal against the order of the deputy registrar in setting aside its creditor's petition. After hearing submissions of counsel from both parties, we dismissed the appeal with costs. We now give our reasons for the decision.

[2] On 1 September 1995 the respondent creditor ("the creditor") obtained a judgment against the appellant debtor ("the debtor") in the Sessions Court for the principal sum of RM33,155.58 together with interest at the rate of 0.067% per day from 5 December 1986 to the date of judgment and 8% per annum from the date of judgment to the date of full settlement, plus late payment charge of RM12 per month to the date of full settlement and costs ("the judgment debt"). The debtor failed to pay the judgment debt or any part thereof.

The Bankruptcy Proceedings

[3] On 12 August 1996, the creditor issued to the debtor a bankruptcy notice claiming the judgment debt for the total sum of RM112,025.01 comprising the outstanding principal sum and interest together with late charge and costs. The bankruptcy notice was personally served on the debtor on 13 August 1996 at his residential address No. 53 Jalan 4M, Ampang Jaya 68000, Selangor ("the said address").

[4] Subsequently on 13 November 1996, the creditor filed the creditor's petition alleging failure by the debtor to comply with the requirements of the bankruptcy notice within the time stipulated therein. The petition was made returnable before the court on 9 October 1997.

[5] When the matter was called for hearing before the deputy registrar on 9 October 1997, the debtor was not ready to proceed and applied for an adjournment to engage counsel. The application was allowed and the proceedings was adjourned to 8 January 1998.

[6] At the adjourned hearing on 8 January 1998, Mr. J.S. Gill, counsel for the debtor, filed a 'notice by the debtor of intention to oppose the petition' ("notice of intention to oppose the petition") setting out three grounds as follows:

(a) First, he complained that the bankruptcy notice and the creditor's petition have not been properly served on him;

(b) Second, he claimed that the calculation of late charge which included the month of August 1996 is incorrect as the bankruptcy notice was only filed on 12 August 1996.

(c) Third, he alleged that the bankruptcy proceedings are irregular.

[7] The deputy registrar, on the application of the debtor's counsel, further adjourned the hearing of the creditor's petition to 12 February 1998.

[8] Prior to the hearing date on 12 February 1998, the debtor had, on 4 December 1998, filed an affidavit denying service of the creditor's petition on him ("the debtor's affidavit"). He averred that at the time of the alleged service he was in Penang and not at home. The debtor also filed a notice of intention to cross-examine the deponent of the affidavit of service which was later withdrawn.

[9] At the hearing on 12 February 1998, the deputy registrar, having considered the creditor's petition, the notice of intention to oppose the petition and the debtor's affidavit, made an order dismissing the petition with costs ("the said order"). The creditor appealed to the judge in chambers against the decision.

[10] Despite the said order, the debtor still proceeded to file an application by way of summons in chambers dated 25 May 1998 praying, *inter alia*, for the same relief that was earlier granted in the said order.

[11] The creditor's appeal to the judge in chambers was heard on 30 July 2004, whereby the learned judge allowed the appeal and made the receiving and adjudicating orders against the debtor, and hence this appeal.

[12] Based on the grounds raised in the memorandum of appeal and submission of learned counsel for both parties, we are of the view that the present appeal may be disposed of upon the determination of the following issues, namely:

(a) whether the filing of notice by debtor of intention to oppose the petition complied with the requirements of the Bankruptcy Rules 1969 ("the Rules");

(b) whether the bankruptcy notice and the creditor's petition were personally served on the debtor;

(c) whether the bankruptcy notice is void for not stating the exact amount due at the date of the notice;

(d) whether the interest claimed exceeded the limitation period of six years.

Notice By Debtor Of Intention To Oppose The Petition, Whether In Compliance With The Rules

[13] From the grounds of judgment, it is apparent to us that the learned judge had rejected the notice of intention to oppose the petition on three grounds. First, he held that the filing and service of the said notice on the day fixed for hearing of the petition contravened r. 117 of the Rules which requires the same to be filed at least three days before such hearing date. Secondly, he found that the said notice which also sought to challenge the content of the bankruptcy notice was not filed within seven days as required by the Rules. Thirdly, he also found that the notice of intention to oppose the petition was not the proper mode of challenging the matters stated therein.

[14] Before us, Mr. J.S. Gill submitted that the learned judge in coming to such a decision had put too much emphasis on the technical and procedural non-compliance with the requirements of the Rules rather than the merit of the debtor's case. On this issue of procedural technicalities, learned counsel referred to the Federal Court case of *Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra (Malaysia) Sdn Bhd* [2002] 1 CLJ 645; [2002] CLJ JT(2), where the Court allowed the appellant's appeal against the decision of the Court of Appeal in allowing the respondent's preliminary objection grounded on defectiveness of the appeal record for non compliance with r. 18(4)(d) and (7) of the Rules of the Court of Appeal 1994.

[15] The notice of intention to oppose the petition, in so far as relevant, reads as follows:

> I, the above Captain Ho Fooi, do hereby give you notice that I intend to oppose the making of a receiving order as prayed and that I intend to dispute the petitioning creditor's debt on the following grounds:
>
> i. The Bankruptcy Notice and/or Creditor's Petition have not been properly served on me.
>
> ii. The calculation of late charge is incorrect. The judgment creditor is claiming late charge of RM 12.00 for the month of August 1996 when the Bankruptcy Notice was only filed on 12 August 1996. The amount for late charge should not include the month of August 1996 as it has not been completed, i.e. the correct amount should be RM1,380.00 and not RM1,392.00 as stated.

[16] From the content thereof, it is obvious to us that the debtor by way of such notice not only seeks to challenge the creditor's petition but also to set aside the bankruptcy notice. As pointed out by this court in *Dato' Sri Teong Teck Leng v. Jupiter Securities Sdn Bhd* [2003] 4 CLJ 34, there are two stages in bankruptcy proceedings, namely, the notice stage and the petition stage. The Rules also provide for different modes or procedures in opposing or challenging a bankruptcy notice and a creditor's petition.

[17] Rule 18(1) provides that every application to the court in a bankruptcy matter shall be made by summons in chambers supported by affidavit, save where otherwise provided by the Act or the Rules. The procedure for setting aside a bankruptcy notice is governed by r. 95(1) which only requires the applicant to file an affidavit in Form 7 stating either he has satisfied the judgment debt in question, or that he has a counterclaim or set-off in the sum equal to or exceeding the claim. At the creditor's petition stage, if the debtor intends to show cause against the petition he is required under r. 117 to file a notice in Form 16 to the registrar specifying the statements in the petition which he intends to deny or dispute and transmit a copy thereof to the creditor three days before the day on which the petition is to be heard.

[18] In *Dato' Sri Teong Teck Leng v. Jupiter Securities Sdn Bhd, supra,* this court has expressed the view that the notice to oppose the petition under r. 117 is only applicable in cases where a debtor intends to show cause against the petition. In the said notice he has to specify the statement in the petition which he intends to deny or dispute.

[19] In *Datuk Lim Kheng Kim v. Malayan Banking Bhd* [1993] 3 CLJ 324, the appellant debtor filed an affidavit in opposition containing 19 paragraphs attacking the bankruptcy notice and raising several grounds why the creditor's petition should be dismissed. The court held that the said affidavit containing multitude of grounds other than the existence of a counter-claim or set-off or cross-demand (being the ground for setting aside a bankruptcy notice) render his affidavit in opposition ineffective and bad in law. Similarly, by analogy, we are of the view that the filing of the notice to oppose the petition herein for purposes other than 'to deny or dispute' the statement in the petition will also render the said notice ineffective and bad in law. In our view the fact in *Megat Najmuddin, supra,* is easily distinguishable as it only relates to the irregularities in the filing of appeal record.

[20] With regard to the filing of the said summons in chambers, we agree with the learned judge that it was 'a blatant act of the debtor to remedy the fatal defect of procedural requirement'. We are also in agreement with the learned judge that the said summons were redundant as the deputy registrar had, on 12 February 1998 dismissed the creditor's petition, being the like prayer sought in the summons.

[21] For the reasons aforesaid, we agree with the finding of the learned judge that the debtor by filing the notice of intention to oppose the petition had adopted the wrong mode of challenging the service of the bankruptcy notice and the creditor's petition, as well as the content of the bankruptcy notice. The appeal on these two issues may be dismissed on this ground alone. However, for completeness, we will proceed to consider the merit of each of the grounds raised in this appeal.

Bankruptcy Notice, Etc. Whether Personally Served

[22] With regard to the service of the bankruptcy notice, the learned judge, upon evaluation of the evidence before him, concluded as follows:

The Judgement Debtor's contention regarding non-service of the Bankruptcy Notice upon him personally must also fail as he had, in his affidavit affirmed on 4th January 1998 admitted to the effect of having personally been served with the Bankruptcy Notice. He cannot now dispute as to the receipt of it, leaving behind his credibility as a *bona fide* Judgment Debtor questioned.

[23] We are satisfied, upon perusal of the said affidavit, that there was a clear admission by debtor that he was personally served with the bankruptcy notice.

[24] On the question of service of the creditor's petition, the learned judge found that the same has been personally served on the debtor. He based his finding on three grounds. First, he accepted the affidavit of service affirmed by one Noorhaidi b Mohd. Noor Rahim that he had on 14 June 1997 effected personal service of the petition to the debtor. Secondly, he questioned the *bona fide* of the debtor in disputing service of the petition as he had also alleged the non service of the bankruptcy notice which is in clear contradiction with his admission on the receipt of the same in his subsequent affidavit. Thirdly, he was of the view that the act of the debtor in withdrawing the notice of intention to cross-examine the deponent of the affidavit of service showed 'his lack of conviction towards this motion raised by him'.

[25] It is trite law that the Court of Appeal is reluctant to reject a finding of fact by a trial court. Generally, the court will not intervene unless the trial court is shown to be plainly wrong in arriving at its decision (see *Lee Ing Chin v. Gan Yook Chin & Anor* [2003] 2 CLJ 19, *Watt v. Thomas* [1947] AC 484). Having considered the grounds on which the learned judge based his finding, we are satisfied that he has not erred in the decision he made on this issue to warrant any appellate intervention.

Challenge On The Calculation Of The Late Charge

[26] This is the second ground raised in the notice of intention to oppose the petition. Counsel for the debtor referred to the bankruptcy notice where a late charge of RM12 per month was imposed from January 1987 to August 1996. It is submitted that since the bankruptcy notice was filed on 12 August 1996, the late charge of RM12 for the full month of August has been wrongly included in the amount due under the bankruptcy notice. By

reason thereof, it is argued that the bankruptcy notice is invalid and *void ab initio*, and consequently the creditor's petition, which also sets out the same sum as in the bankruptcy notice, is also invalid.

[27] In support of his submission, learned counsel referred to the case of *Ghazali Mat Noor v. Southern Bank Bhd & Other Cases* [1989] 2 CLJ 380; [1989] 1 CLJ (Rep) 35 where it was held that a bankruptcy notice which did not quantify the interest sums to be invalid *ab initio* and consequently all subsequent proceedings relating thereto are a nullity. We were also referred to another Supreme Court case of *Fawzia Osman v. Bank Bumiputra (M) Bhd* [1991] 1 CLJ 652; [1991] 1 CLJ (Rep) 113, where a bankruptcy notice was also held to be invalid on the ground that it included claim for interest to date of realization which could not be ascertained or determined at the date of the notice.

[28] In our view the two cases aforesaid are distinguishable as the facts showed that the bankruptcy notices only stated the rate of interest but did not quantify the interest sums payable, whereas in the present appeal the interest sums payable was specifically set out in the bankruptcy notice. It was only contended that the sum so specified exceeded the amount actually due at the date of filing of the bankruptcy notice as it included interest in respect of late charge of RM12 for the month of August 1996 which was not due at the time of such filing.

[29] Proviso (ii) to s. 3(2) of the Bankruptcy Act 1967 ("the Act") provides that a bankruptcy notice shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice.

[30] In the present appeal, the bankruptcy notice was personally served on the debtor on 13 October 1996. There was no notice given by the debtor to the creditor that he disputed the validity of the notice by reason of excess amount within the stipulated seven days' period. By reason thereof the debtor would have committed an act of bankruptcy after the expiry of seven days from the date of service by virtue of s. 3(1)(i) of the Act.

[31] It is trite law that any challenge to the validity of a bankruptcy notice on the ground that the amount stated therein exceeds the amount actually due must be made within the time prescribed in the said notice as required by the aforesaid proviso. In *Wee Chow Yong, ex p Public Finance Bhd* [1990] 1 CLJ 176; [1990] 3 CLJ (Rep) 349, the debtor sought to impugn a bankruptcy notice on several grounds. It was contended, as one of the grounds, that the sum specified in the notice as being due by way of interest included interest not recoverable under s. 6(3) of the Limitation Act 1953, being interest after the expiry of the six years limitation for recovery of the same. The court dismissed the objection as the seven-day period stipulated in the bankruptcy notice for disputing the amount due had expired.

[32] In *Development & Commercial Bank Bhd v. Datuk Ong Kian Seng* [1995] 3 CLJ 307, the debtor filed an affidavit opposing the petition contending that the bankruptcy notice was invalid on the ground that the interest specified was wrongly calculated. In that case the bankruptcy notice was issued on 14 June 1991 and the affidavit opposing the petition contending the bankruptcy notice was invalid on that ground was filed on 18 February 1992. Mohamed Dzaiddin FCJ (as he then was), in delivering the decision of the Federal Court said, at p 733:

> ... what is patently clear to us is that on the facts, the respondent cannot be allowed to dispute the validity of the bankruptcy notice on the ground on which he now relies because the notice of dispute by way of his affidavit affirmed on 18 February 1992 has not complied with proviso (ii) to section 3(2) of the Act, ...

[33] Based on the aforesaid authorities, the appeal on this ground must necessarily fail.

Whether Interest Exceeds The Limitation Period Of Six Years

[34] Learned counsel for the debtor pointed out that the calculation of interest in the bankruptcy notice was for a period 3,193 days from 5 December 1986 to 1 September 1995. By reason thereof it is contended that the bankruptcy notice is invalid as it included interest which exceeded the six years limitation as provided under s. 6(3) of the Limitation Act 1953. It is pertinent to note that this issue was neither canvassed before the deputy

registrar nor the learned judge on appeal. However this court had earlier allowed the debtor to amend the memorandum of appeal to raise this new point.

[35] The judgment to which the bankruptcy notice relates was obtained on 1 September 1995. That part of the judgment which is relevant to the calculation of interest is reproduced as follows:

> MAKA ADALAH PADA HARI INI DIHAKIMI bahawa Defendan hendaklah membayar kepada Plaintif jumlah sebanyak RM 33,155.58 dengan faedah atas jumlah tersebut pada kadar 0.067% sehari dari 5 haribulan Disember, 1986 sehingga tarikh Penghakiman dan kemudiannya faedah pada kadar 8% setahun dari tarikh Penghakiman sehingga tarikh penyelesaian sepenuhnya, ...

[36] Whereas the particulars of debt as set out in the bankruptcy notice are as follows:

Decretal Amount	RM 33,155.58
Interest at the rate of 0.067% per day on RM33,155.58 from 5 December 1986 to 1 September 1995 (x 3,193 days)	RM 70,930.06
Interest at the rate of 8% per annum on RM33,155.58 from 2 September 1995 to 12 August 1996 (x 346 days)	RM 70,930.06
Late charge of RM12 per month from January 1987 to August 1996 (x 116 mths)	RM 1,392.00
Costs	RM 4,033.00
	RM112,025.01
Paid into account	NIL
Amount due	RM112,025.01

[37] From the aforesaid particulars, it is apparent to us that the interest claimed for 3,193 days from 5 December 1986 to 1 September 1995 was for the period before judgment, while that claimed for 346 days from 2 September 1995 to 12 August 1996 was for the period after judgment.

[38] The limitation period for the recovery of interest in respect of a judgment debt as provided under s. 6(3) of the Limitation Act reads as follows:

> (3) An action upon a judgment debt shall not be brought after the expiration of twelve years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

[39] In *United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin* [2002] 2 CLJ 413; [2002] CLJ JT(3), the Federal Court was posed with question on the proper construction of s. 6(3) of the Limitation Act, in respect of the second limb, that is, 'No arrears of interest of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due'. Abdul Malek Ahmad JCA (as he then was) in delivering the judgment of that court said, at p 427, as follows:

> ... we would hold that it is obvious that the second limb of s. 6(3) of the Act provides that an action to recover arrears of interest must be brought within six years of the judgment date and because of the word "arrears", it cannot denote interest which is still not due ...

[40] From the aforesaid authority, it is obvious to us that for the purpose of computing the six-year limitation period under s. 6(3) of the Limitation Act for the recovery of interest in respect of a judgment debt, time begins to run from the date of judgment. Such limitation only applies to a post judgment interest and not to pre judgment interest. In the present appeal the judgment to which the bankruptcy notice relates was obtained on 1 September 1995 and the recovery of arrears of interest was only made until 12 August 1996, which was well within the six years limit prescribed for the recovery thereof.

[41] With regard to the interest in respect of the period of 3,193 days as raised by the learned counsel, it also apparent to us that it was a pre judgment interest. In *Perwira Affin Bank Bhd v. Lim Ah Hee* [2004] 2 CLJ 787 it was held that the interest calculated prior to the date of the judgment merged into the judgment debt, and therefore the creditor would be entitled to recover the same. For the reasons aforesaid, the appeal on this ground is also devoid of merit.

A **[42]** Each of the grounds of appeal having failed, we unanimously dismissed the appeal with costs. The decision of the learned judge is hereby affirmed. Deposit to the creditor to account of taxed costs.

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